81 T.C. 782 (1983)

A like-kind exchange of property received in a corporate liquidation qualifies for nonrecognition of gain under Section 1031 if the shareholder held the property for investment purposes and the exchange is demonstrably made by the shareholder, not the corporation.

Summary

Joseph Bolker, sole shareholder of Crosby, liquidated the corporation under Section 333 of the Internal Revenue Code and received real property. Shortly after, Bolker exchanged this property for other like-kind properties in a transaction facilitated by Parlex, Inc. The Tax Court addressed whether the exchange was attributable to the corporation and taxable at the corporate level, or properly attributed to Bolker and eligible for non-recognition under Section 1031. The court held that the exchange was made by Bolker individually and qualified for nonrecognition because the property was held for investment. This case clarifies that a shareholder can engage in a valid like-kind exchange even when the exchanged property is received shortly before in a corporate liquidation, provided the shareholder demonstrates intent to hold the property for investment.

Facts

Petitioner Joseph Bolker was the sole shareholder of Crosby, Inc., which owned undeveloped land (Montebello property). Bolker had initially planned to develop apartments on the land but faced financing difficulties. Following divorce proceedings where Bolker became the sole shareholder, he decided to liquidate Crosby under Section 333 to take the property out of corporate form, aiming to utilize potential losses. After liquidation on March 13, 1972, Bolker received the Montebello property. Prior to the liquidation plan adoption, Crosby had engaged in failed negotiations to sell the property to Southern California Savings & Loan Association (SCS). After the liquidation but in continuation of resumed negotiations, Bolker, acting individually, agreed to exchange the Montebello property with SCS. To facilitate the exchange, Bolker used Parlex, Inc., an intermediary corporation formed by his attorneys. On June 6, 1972, Bolker exchanged the Montebello property for like-kind properties through Parlex. Bolker reported the exchange as tax-free under Section 1031.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Bolker’s income taxes, arguing that the exchange was actually made by Crosby before liquidation, thus taxable to the corporation, and alternatively, that Bolker did not hold the Montebello property for investment. Bolker petitioned the Tax Court, contesting the deficiency.

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Issue(s)

1. Whether the exchange of the Montebello property should be imputed to Crosby, Inc., Bolker's wholly owned corporation, or be recognized as an exchange by Bolker individually?
2. Whether, if the exchange is attributed to Bolker, it qualifies for nonrecognition treatment under Section 1031 of the Internal Revenue Code?

Holding

1. No, the exchange was made by petitioner Joseph Bolker, not Crosby, Inc., because the negotiations and agreement were demonstrably conducted and finalized by Bolker in his individual capacity after the liquidation.
2. Yes, the exchange qualifies for nonrecognition treatment under Section 1031 because the Montebello property was held by Bolker for investment purposes.

Court's Reasoning

Exchange Attributed to Shareholder: The court distinguished this case from *Commissioner v. Court Holding Co.*, emphasizing that unlike in *Court Holding*, Crosby did not actively negotiate the final exchange terms. Referencing *United States v. Cumberland Public Service Co.*, the court underscored that a corporation can liquidate even to avoid corporate tax if the subsequent sale is genuinely conducted by the shareholders. The court found that the 1969 negotiations between Crosby and SCS had failed and new negotiations in 1972 were initiated and conducted by Bolker post-liquidation. The court noted, "*the sine qua non of the imputed income rule is a finding that the corporation actively participated in the transaction that produced the income to be imputed.*" Here, Crosby's involvement was minimal, and Bolker demonstrably acted in his individual capacity.

Section 1031 Qualification: The court followed its decision in *Magneson v. Commissioner*, which held that contributing property received in a like-kind exchange to a partnership qualifies as 'holding for investment.' The court reasoned that the reciprocal nature of Section 1031's 'held for investment' requirement applies equally to property received and property relinquished. Quoting *Jordan Marsh Co. v. Commissioner*, the court stated Section 1031 applies when the "*taxpayer has not really 'cashed in' on the theoretical gain, or closed out a losing venture.*" Bolker's receipt of the Montebello property via Section 333 liquidation and immediate like-kind exchange demonstrated a continuation of investment, not a cashing out. The court rejected the IRS's argument that Bolker did not 'hold' the property for investment because of the immediate exchange, finding that the brief holding period in the context of a like-kind exchange following a tax-free liquidation was consistent with investment intent.

Practical Implications

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Bolker v. Commissioner provides important guidance on the interplay between corporate liquidations and like-kind exchanges. It establishes that a shareholder receiving property in a Section 333 liquidation is not automatically barred from engaging in a subsequent tax-free like-kind exchange under Section 1031. For attorneys and tax planners, this case highlights the importance of structuring transactions to clearly demonstrate that the exchange is conducted at the shareholder level, post-liquidation, and that the shareholder intends to hold the property for investment. The decision reinforces that the 'held for investment' requirement in Section 1031 is not negated by a brief holding period when the subsequent exchange is part of a continuous investment strategy. This case is frequently cited in cases involving sequential tax-free transactions and remains a key authority in understanding the boundaries of the corporate liquidation and like-kind exchange provisions.

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